

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS
Title 3, California Code of Regulations
Section 3700, Subsection(c), Oak Mortality Disease Control
INITIAL STATEMENT OF REASONS/
POLICY STATEMENT OVERVIEW

Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address

This regulation is intended to address the obligations of the California Department of Food and Agriculture to protect the agricultural industry of California and prevent the introduction and spread of injurious plant pests.

Specific Purpose and Factual Basis

The specific purpose of Section 3700 is to provide authority for the State to mitigate the effects of oak mortality disease (sudden oak death) on the agricultural industry, which includes native tree stands, by establishing a program to arrest the artificial spread of the disease to additional areas; thereby protecting California's agricultural industry and environment. Subsection 3700(c), lists the articles and the commodities covered under this regulation.

The factual basis for the determination by the Department that the emergency amendment of Section 3700(c) was necessary is as follows:

The Department of Food and Agriculture has found that oak mortality disease (sudden oak death) caused by a fungus, *Phytophthora ramorum*, presents a clear and present danger to the native stands of oak and other trees, the nursery industry, other agricultural commodities and plant life (including ornamental plantings) of California. The Department readopted Section 3700 to implement a program to arrest the artificial spread of the disease. Continued action is necessary to contain and minimize the destructive impact of this pest and disease at the earliest possible time. On April 9, 2004, the Administrator of the United States Department of Agriculture

(USDA), Animal and Plant Health Inspection Services (APHIS) issued the first emergency order restricting the interstate movement of nursery stock from California nurseries located outside the area regulated under Section 3700. On April 22, 2004, USDA, APHIS issued a new order that replaced that issued on April 9, 2004. On April 23, 2004, USDA, APHIS issued a clarification of its April 22, 2004 order. Through this last federal emergency order and its subsequent clarification, the USDA, APHIS identified additional plant species as regulated associated articles and as such, these associated articles are prohibited interstate movement from all California nurseries unless properly certified under the provision of the federal emergency order.

Since April 2004, the USDA, APHIS has issued a series of federal emergency orders that amended the articles regulated including on: 1) August 5, 2004, 2) December 21, 2004, 3) August 3, 2005, and 4) September 14, 2005. As a result, it was necessary to make emergency amendments to the State's regulation governing the intrastate movement of hosts and associated articles (nursery stock) due to these federal orders. Without a parallel State regulation that is substantially the same as the federal domestic quarantine and any related federal orders, the USDA cannot regulate less than the entire State.

On November 15, 2005, the USDA, APHIS again issued a new federal order that was effective November 28, 2005. As an interim measure, *Abies concolor* (white fir) and *Viburnum opulus* [(= *V. trilobum*)(American cranberry viburnum)], plants are specifically noted as being added to those under regulation under the federal order dated December 21, 2004. This federal order specifically affects the interstate movement of nursery stock from the States of Washington, Oregon, and California. Under authority of this order, nurseries operating under a compliance agreement may continue to ship "Hosts and Associated Plants" including these newly listed plants. Any other nurseries containing these newly listed associated plants must have been properly inspected, sampled and tested and placed under a Compliance Agreement by November 28, 2005, to be able to move plants interstate.

The USDA, APHIS' action is authorized by the Plant Protection Act of June 20, 2000, as amended, Section 412(a), 7 U.S.C. 7712(a), which authorizes the United States Secretary of

Agriculture to prohibit or restrict the movement in interstate commerce of any plant, plant part, or article if the Secretary determines the prohibition or restriction is necessary to prevent the dissemination of a plant pest within the United States.

The November 15, 2005 federal order also had a revised “APHIS List of Hosts and Plants Associated with *Phytophthora ramorum* (Revision dated 10 November 2005).” Upon review of this list, two hosts; *Griselinia littoralis* (Greselinia) and *Parrotia persica* (Persian ironwood); and, one associated host, *Taxus x media* (Yew) are present that are not currently listed as regulated under Section 3700. Therefore, to ensure harmonization with the federal order, these plants are also being added to Section 3700.

Additionally, non-substantial changes involving typographical errors pertaining to the spelling of scientific names and the closing of parentheses have been made.

Section 3700(c) already lists *Viburnum opulus* (European cranberrybush viburnum) as an associated host. However, the federal order is adding its synonymy and common name to *V. opulus* since the old name is often used in the nursery trade. Therefore, the Department is proposing an emergency amendment to Section 3700(c) to continue to provide the necessary regulatory framework for a State program to continue to arrest the intrastate and interstate spread of this disease and be in compliance with the November 15, 2005 federal order.

The Department amended this regulation because it is necessary to continue to have authority for an established statewide program in order to arrest the artificial spread of the disease to additional areas and harmonize the State’s regulation governing the intrastate movement of nursery stock with the latest federal order that governs the interstate movement of California nursery stock. Immediate amendment of this regulation was necessary to mitigate the effects of this disease on the agricultural industry, which includes native tree stands. Additionally, it was necessary to immediately amend this regulation to avoid more stringent federal restrictions being placed against the State to prevent the interstate movement of articles and commodities that may carry *Phytophthora ramorum*. The immediate implementation of this regulatory action was

necessary to prevent the USDA, APHIS from considering the entire state as infested with *Phytophthora ramorum*, rather than just the current 14 counties regulated under Section 3700. If this were to occur, there would also likely be additional detrimental quarantine requirements directed against California commodities by our international trade partners.

These specific facts and circumstances also clearly indicate that the spread of oak mortality disease presents a clear and imminent danger to property and, therefore, constitutes an emergency. The Department was therefore compelled to take immediate action to mitigate the damage to property and preserve the general welfare.

The Department has determined that *Phytophthora ramorum* is a serious forest pest for which control is required to prevent further spread and harm to forests, parks, commercial and urban landscapes, and watersheds. This disease is known to occur in 14 California counties. Oak mortality disease is serious due to the fact that it kills tanoak, coast live oak, and black oak trees. The pest has been confirmed as infecting Shreve's oak and non-oak species such as rhododendron, huckleberry, bigleaf maple, California buckeye, California coffeeberry, manzanita, and toyon and other hosts causing foliar and stem disease symptoms.

The emergency amendment of Section 3700(c) established new hosts and associated hosts that would be covered by restrictions to prevent artificial spread of the pest to non-infested areas and corrected some typographical errors. To protect California's agricultural industry, it was necessary to immediately regulate movement of hosts and potential carriers that can transfer the pest from the infested area. Therefore, it was necessary to amend Section 3700(c) on an emergency basis.

The Department made this emergency amendment to Section 3700(c) to continue to provide the necessary regulatory framework for a State program to continue to arrest the spread of this disease in compliance with the September 14, 2005, federal order.

The emergency amendment of Section 3700(c) established *Griselinia littoralis* (Greselinia) and *Parrotia persica* (Persian ironwood) as hosts; and, *Abies concolor* (white fir), *Taxus x media* (Yew) and the synonymy and common name for *Viburnum opulus* [= *V. trilobum*](American cranberry viburnum)] as associated host plants under the articles and commodities covered by the regulation. The effect of the regulation is to provide authority for the State to regulate movement of these new associated hosts and potential carriers of disease from the regulated area to prevent artificial spread of the pest to non-infested areas to protect California's agricultural industry and the environment.

Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that Section 3700(c) does not impose a mandate on local agencies or school districts, except that the agricultural commissioner of a county under regulation has a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code because the 14 affected county agricultural commissioners requested that when established as a new host or associated article by a federal order, Section 3700, subsection (c) be changed to reflect that.

The Department has also determined that the amended regulation will involve no additional costs or savings to any state agency, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable savings to local agencies or costs or savings to school districts under Section 17561 of the Government Code, and no costs or savings in federal funding to the State.

The Department has determined that the proposed action will not have a significant adverse economic impact on housing costs. The Department of Food and Agriculture has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

The Department is not aware of any additional cost impacts that a representative private person would necessarily incur in reasonable compliance with the proposed action. There was an

ongoing program in place prior to this emergency amendment of the regulation. After consulting with the known affected individuals/businesses and/or the county agricultural commissioners in the regulated area, the program concluded there are no anticipated new economic impacts or newly affected parties due to this proposed action.

Therefore, the proposed action will not result in any new costs for compliance for individuals/businesses previously regulated in the 14 counties prior to this emergency amendment. Therefore, the cost impact of the amended regulation on a representative business is not expected to be significantly adverse.

Assessment

The Department has made an assessment that this amendment to the regulations would not (1) create or eliminate jobs within California, (2) create new businesses or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

Alternatives Considered

The Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

Information Relied Upon

The Department relied upon the following studies, reports, and documents in the amendment of Section 3700:

E-mail dated December 15, 2005 from Vince Arellano to Stephen Brown.

“Phytophthora ramorum (ramorum blight and die back, sudden oak death): Listing and Regulation of Plants Recently Reported Associated with *P. ramorum*,” dated November 15,

2005; and, "APHIS List of Hosts and Plants Associated with *Phytophthora ramorum*," dated November 15, 2005, signed by John H. Payne for Richard L. Dunkle.

Facsimile transmission of a letter dated August 20, 2004 to Secretary A.G. Kawamura from David C. Frieders.

Facsimile transmission of a letter dated June 30, 2004 from Ronnie K. Eaton to Nick Condos.

Facsimile transmission of a letter dated June 30, 2004 to Dr. Dennis E. Mayhew from Steve Hajik.

Letter dated June 30, 2004 from David R. Whitmer to Dr. Dennis E. Mayhew.

Facsimile transmission of a letter dated June 30, 2004 to Dr. Dennis E. Mayhew from Stacy K. Carlsen.

Facsimile transmission of a letter dated June 30, 2004 to Dr. Dennis E. Mayhew from Edward P. Myer.

Letter dated June 28, 2004 from David W. Moeller to Dr. Dennis E. Mayhew.

Facsimile transmission of a letter dated June 28, 2004 to Dr. Dennis E. Mayhew from John Westoby.

Letter dated June 28, 2004 from Gail M. Raabe to Dr. Dennis E. Mayhew.

Letter dated June 25, 2004 from David Bengston to Dr. Dennis E. Mayhew.

Letter dated June 25, 2004 from Greg Van Wassenhove to Dr. Dennis E. Mayhew.

Letter dated June 25, 2004 from Susan Cohen to Dr. Dennis E. Mayhew.

Letter dated June 25, 2004 from Eric Lauritzen to Dr. Dennis E. Mayhew.

Letter dated June 24, 2004 from John E. Falkenstrom to Dr. Dennis E. Mayhew.